

## MEMO ENDORSED

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February 26, 2021

#### VIA ECF & EMAIL

The Honorable Kenneth M. Karas  
United States District Judge  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

Re: *U.S. v. Alex Ayala*  
17 Cr. 202 (KMK)

Dear Judge Karas:

On July 8, 2020, the Court appointed me to assume representation of Mr. Ayala in his re-sentencing as a result of the Supreme Court's ruling in *U.S. v. Davis*, 139 S.Ct. 2319 (2019). On November 25, 2020, counsel submitted a sentencing submission on behalf of Mr. Ayala in advance of his re-sentencing. At this time, a date has not been set for Mr. Ayala's re-sentencing. On December 18, 2020, counsel filed a motion for compassionate release requesting that Mr. Ayala be released, pursuant to 18 U.S.C. § 3582(c)(1)(A), because "extraordinary and compelling reasons" exist to warrant such a modification of his sentence. On January 19, 2021, counsel filed a renewed request for compassionate release that the Government responded to on January 26, 2021. Counsel has also submitted a request to the Warden at Fort Dix asking that the BOP move the sentencing court to release Mr. Ayala, pursuant to 18 U.S.C. § 3582(c)(1)(A), on December 18, 2020.<sup>1</sup> At this time, neither counsel nor Mr. Ayala has received a response from the Warden. The purpose of this letter is to update the Court as to Mr. Ayala's present condition.

Mr. Ayala has tested positive for COVID-19. He is housed in Unit 5811 on the West Side of Fort Dix. According to Mr. Ayala, there are 170 cases of COVID-19 on the first and second floors where he is housed and he is presently waiting for a chest x-ray because he is short of breath. As of today, 2,014 inmates have tested positive for the virus.<sup>2</sup> Mr. Ayala has specifically requested

<sup>1</sup> Mr. Ayala also submitted a request for compassionate release to the Warden, which, according to Mr. Ayala, was denied on December 21, 2020. He is in the process of mailing a copy to counsel.

<sup>2</sup> COVID-19, Coronavirus, COVID-19 Test Information, BOP.gov, <https://www.bop.gov/coronavirus/> (January 19, 2021).

that I update the Court as to his medical condition and inform the Court that the conditions in Fort Dix are deteriorating on a daily basis.

As a result of the current outbreak of COVID-19 at Fort Dix, the harsh conditions that Mr. Ayala has endured over the past 10 months, the deteriorating conditions at the prison, his current COVID-19 status, as well as Mr. Ayala's post-sentencing rehabilitation, counsel respectfully requests that the Court grant compassionate release for Mr. Ayala and requests that he be released. The Court's time and consideration of this matter are greatly appreciated.

Respectfully submitted,

/s/

Margaret M. Shalley, Esq.

cc: All counsel (*via ECF & email*)

The application for compassionate release, pursuant to 18 U.S.C. Section 3582, is denied. While it is unfortunate that Mr. Ayala has contracted COVID-19, so too it is unfortunate that he declined to take the vaccine that might have prevented him from contracting COVID-19. Scientific studies demonstrate that the vaccine is highly effective at preventing serious illness from COVID-19 and that it has few side effects. There was no rational reason for Mr. Ayala to make that choice. Moreover, the Government reports that Mr. Ayala is not suffering any serious symptoms after having contracted COVID-19. Finally, it makes little sense to release Mr. Ayala from prison and risk infecting other individuals who have not had the privilege of having the vaccine made available to them.

So Ordered.



3/5/21